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'Neither For Nor Against LD 2139

An Act To Increase Government Accountability

Presented by Representative Warren
March 13, 2020 at 10:00 am
Room 436 Statehouse

Senator Deschambault, Representative Warren, and Members of the Joint Standing Committee on Criminal Justice and Public Safety:

My name is Major Chris Grotton, and I am here to represent the Maine State Police and the Department of Public Safety to testify neither for nor against LD 2139.

This bill would strike Maine's current statute that prohibits Maine criminal justice agencies – such as the Maine State Police – from confirming the existence or nonexistence of intelligence and investigative record information to any person or entity that is not eligible to receive the information.

We understand that the reason this bill was introduced was at least in part because our agency did not confirm the existence or nonexistence of records pertaining to the use of certain investigative technologies in response to a recent 'open records' request we received.

We think it is vitally important that we have a conversation about how section 807 relates to that response. In having that conversation, however, it is also important to bear in mind that section 807 serves an overall important public policy function. This is because the statute, among other considerations, ensures that the privacy rights and reputations of individuals – be they accused persons, victims, or minors – are shielded; that the safety and lives of confidential informants are protected; that the ability to conduct discrete

investigations is ensured; and that security measures that are used to protect members of the public remain are not undermined.

At first glance repealing section 807 altogether might seem to be a straightforward way to provide more transparency into the operations of the government. Before doing so, however, is very important to understand how a total repeal would affect the balance amongst considerations of government transparency, personal privacy, and personal and public safety and security.

A few examples of factors that need to be weighed when considering LD 2139:

- It is not difficult to imagine why security plans developed around an event or protective function are confidential. The effectiveness of security and the physical security of protected persons require the statutory protection that section 807 in part provides;
- Law enforcement agencies maintain records of investigations involving substantiated and unsubstantiated complaints against individuals, including minors. The current requirement to maintain the confidentiality of such records is critical to protecting the privacy and reputational interests of all members of the public, and section 807 at times serves an important statutory function to ensure that the reputations, future livelihoods, and personal privacy interests of members of the public are effectively protected;
- Individuals acting as confidential informants must rely on the criminal justice agencies with whom they are working to protect their identities and keep them and their families safe. If records identifying a confidential informant were publicly released – or even confirmed to exist – not only would that confidential informant's life and personal safety be put at risk, but there also would be a disincentive for others to provide information to the government that would help to solve and prevent crimes;
- The confidentiality of investigative practices and techniques allows law enforcement to effectively solve crime. If the general public had access to records that reveal specific investigative, forensic, or technological capabilities (and limitations) of law enforcement agencies, such access would have an adverse impact on the ability to solve crimes and protect the public. Section 807 serves an important function by ensuring that law enforcement agencies do not have to confirm the existence or nonexistence of records that would reveal these capabilities;
- Technology also provides opportunities to effectively solve crime. While we understand the trepidation that can come with the introduction and use of new technologies, we also recognize our shared responsibility to protect the public and effectively solve crime. As an example of the use of a type of such technology: In the aftermath of a widespread increase in pharmacy robberies, we began deploying

opioid pill bottles with GPS trackers which would activate after a robbery and help the police locate the suspects. If, at that time, we had been required to disclose the existence of records showing that we used that technology, the tool would have been rendered ineffective.

Those examples highlight the challenges we all face to find the appropriate balance between law enforcement's duty to effectively solve crime, the need to reasonably protect personal privacy and reputational interests, and the public's understandable desire for government transparency.

In closing, we appreciate and respect the good intentions of the bill. We also understand the need to reexamine the policy underlying section 807 and to have the discussion that LD 2139 bill will encourage. We also are very aware, however, of the probable unintended consequences that would result if the statutory authority provided by section 807 were repealed in its entirety. We welcome the opportunity to be a part of this discussion as you consider this important issue.

On behalf of the Maine State Police and the Department of Public Safety I thank you for your time, and I would be happy to respond to any questions that you might have.